tending to apply them on the contract with the defendant; but had not delivered any. The defendant, knowing of the plaintiff's rights, entered upon the land, and removed the ties which had been cut. Of this no complaint was made. But he went in and cut down 126 more trees, and left tops, etc., cumbering the ground, whereupon the plaintiff brought this action for damages for trespass, in the District Court of the District of Temiskaming. The action was tried with a jury, who found a verdict for the plaintiff for $200, after a charge not objected to. From the judgment directed to be entered on this verdict, the defendant appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

W. L. Scott, for the appellant.

A. G. Slaght, for the plaintiff, respondent.

RIDDELL, J., delivering the judgment of the Court, said that the charge of the District Court Judge indicated damages as being recoverable on two heads: (1) the value of the timber taken away; (2) the damage to the land from the tops, refuse, etc., being left on the ground.

As to the former ground, the defendant now offered in evidence an order in council shewing that the pine was not the property of the plaintiff; and, as this was an official document and could not be fabricated, it should be received, but only on terms of the costs up to the time of its production before this Court being paid by the appellant.

But, even if the first ground of damages went by the board, the second remained. The defendant had no right to cover the plaintiff's land with such dangerous refuse in any event. The plaintiff gave evidence that the damage to him from this cause amounted to $378. Another witness said "a couple of hundred dollars anyway;" one witness for the defence avoided the question; and the others said nothing about it. A jury would scarcely be justified in finding the damages on this head at less than $200; and, in view of the fact that the defendant did not ask that the jury should distinguish between damage for timber taken away and damage from improperly leaving refuse on the ground, a new trial should not now be granted.

That the plaintiff had a right to the land was clear from Goff v. Lister (1867-8), 13 Gr. 406, 14 Gr. 451; and the cases of National Trust Co. v. Miller and Dickson, Schmidt v. Miller